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DIGEST OF OTHER RECENT VIRGINIA DECISIONS

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

BARNETT et al. v. BLAIN et al.

Nov. 20, 1919.

[101 S. E. 239.]

Wills (§ 616 (4)*)—Absolute Estate by Gift of Personalty for Life with Power of Disposition and Limitation Over.—Where testator gave his wife all his realty and personalty, to hold and use for her benefit for her natural life, expressing the wish that the property should on her death be divided equally among his children, but that she should have the privilege to dispose of any of the personalty during her life, the widow took an absolute estate in the personalty.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 166; 13 Va.-W. Va. Enc. Dig. 829. For present law on this subject, see Va. Code § 5147, Revisor's note.]

Appeal from Circuit Court, Nelson County.

Suit between Oscar L. Barnett, administrator, etc., and others, and Harry L. Blain and others. From the decree, the former appeal. Reversed, and cause remanded for further proceedings.

L. Grafton Tucker, of Lovingson, for appellants.

S. B. Whitehead, of Lovingson, for appellees.

POOLE v. PERKINS.

Nov. 20, 1919.

[101 S. E. 240.]

1. Contracts (§§ 2, 144*)—Governed by Law of Place of Execution or Performance.—Every contract as to its validity, nature, interpretation and effect—the right, in contradistinction to the remedy—is governed by the law of the place where made, unless to be performed in another place, when it is governed by the law of the place of performance.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 106, 107.]

2. Contracts (§ 2*)—Capacity to Contract Determined by Lex Loci Contractus.—The capacity of parties to contracts is, with some few

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

exceptions, determined by the law of the place with reference to which the contract is made, which is usually the place where made, unless it is to be performed in another place or country, and then by the law of that country.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 106.]

3. Husband and Wife (§ 56*)—Contract of Married Women Governed by Lex Loci Contractus.—The disability of overture arising from the law of the married woman's domicile does not follow her into other states, and where she goes into another state, and makes a contract valid by and to be performed in accordance with the laws of such state, she will be bound thereby, and such contract will be enforced wherever suit is brought, even in the state of her domicile, subject only to exception on ground of public policy in states where married women are totally incapacitated to contract.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 111.]

4. Husband and Wife (§ 56*)—Necessity of Bodily Presence in State Where Contract of Married Woman Is Made.—The actual bodily presence of a married woman as the contracting party is not necessary to make the contract valid according to the laws of the state of performance, which is other than that of her domicile, in which she is incapacitated, so that a note of a married woman, delivered by being mailed or sent by her to the state of performance, binds her as fully as if she had signed and delivered the note in such state, and not in the state of her domicile.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 111, 112.]

5. Husband and Wife (§ 56*)—Capacity of Wife as Maker of Note Determined by Law of State Where Payable.—Where a married woman, incapable of contracting in the state of her domicile, executed and delivered there a promissory note payable in another state, where she had a right to contract, the note was governed by the law of the latter state, and she could be sued therein as maker of the note.

6. Contracts (§ 2*)—Conflict of Laws Governed by Intent of Parties.—Where a contract, invalid in the state where it is executed because of lack of contractual capacity of the parties, provides for performance in a state whose laws will uphold it, such provision is alone sufficient to evidence an intention to bring the contract within the laws of the latter state; the true criterion as to the governing law being the intention of the parties as to what law shall govern.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 106.]

Error to Circuit Court, Wythe County.

Proceedings by notice of motion by Marvin Perkins against

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

F. D. Poole. Judgment for plaintiff, and defendant brings error. Affirmed.

W. B. Kegley, of Wytheville, for plaintiff in error.

Robert Sayers and *S. B. Campbell*, both of Wytheville, for defendant in error.

NOTE.

For editorial reference to the above case, see 5 Va. Law Reg. N. S. 957, and 6 Va. Law Reg., N. S., 62. For other comments, see "Miscellany" in this number.

ECHARD v. WAGGONER et ux.

Nov. 20, 1919.

[101 S. E. 245.]

1. Evidence (§ 419 (2)*)—Parol Evidence Showing Consideration for Deed.—Parol evidence is admissible to show the true consideration for a conveyance, and that the actual consideration paid or promised was different from that stated in the deed, if the evidence does not alter or contradict the legal import of the deed.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 702, 703.]

2. Deeds (§ 19*)—Inseparable Character of Consideration for Life Lease and Conveyance of Remainder.—Where father and mother deeded land to daughter on their death, retaining a life estate, and leasing to daughter for life in consideration of daughter's paying their debts and supporting them during their lives, and, after the father and mother left her house on account of quarrels, the daughter refused to pay their debts or taxes on the land promptly, the consideration for the conveyance to her of the remainder, and the consideration for the lease of the life estate to her could not be apportioned or separated, and the deed was subject to cancellation in the father's and mother's suit for failure of consideration, though there was a reserved right in them to cancel the lease for failure to support and to reassume possession at will.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 387 et seq.]

3. Cancellation of Instruments (§ 32*)—Cancellation of Deed Whose Consideration Has Failed.—Equity has jurisdiction to cancel conveyances the consideration for which has failed.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 392; 11 Va.-W. Va. Enc. Dig. 892, 893.]

4. Equity (§ 39 (1)*)—Retention of Jurisdiction Once Acquired.—Having acquired jurisdiction of a suit to cancel a deed, the equity

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